HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

Writ Petition No.16624 of 1995

Between:

Nitish R. Modi … Petitioner

And

Koduri Gopala Krishna and another

… Respondents

:: ORDER::

Counsel for Petitioners: Sri Syed Ghouse Basha

Counsel for Respondent No.1: Sri C. Prakash Reddy representing Sri V.R. Avula

Counsel for Respondent No.2: None appeared.

March 29, 2006

In this petition, the petitioner prayed for restraining the District Consumer Disputes Redressal Forum, Krishna District at Machilipatnam (for short 'the District Forum') from dealing with and deciding Consumer Dispute No.276 of 1995.

The petitioner and respondent No.1 are said to be dealing in selling and buying of shares at Ganapavaram in West Godavari District. Respondent No.1 filed complaint under Section 12 of the Consumer Protection Act, 1986 (for short 'the Act') for issuance of a direction to the opposite party (petitioner herein) to make available the chopri book; to deliver the shares purchased on his behalf at a value of Rs.64,150/- together with interest and also pay compensation of Rs.50,000/- for mental agony. Along with the complaint, respondent No.1 enclosed a schedule giving the details of the number of shares.

The District Forum entertained the complaint filed by respondent No.1 and issued notice to the petitioner requiring him to appear on 8-8-1995 and file copy to the documents in support of his cause. However, instead of filing reply to the complaint of respondent No.1, the petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution and persuaded the learned Single Judge to pass an interim order restraining the District Forum from proceeding with the complaint filed by respondent No.1.

The case set up by the petitioner is that the complaint made by respondent No.1

does not constitute a ‘consumer dispute’ within the meaning of Section 2 (e) of the Act inasmuch as, there is no deficiency in the service allegedly agreed to be provided by him and, therefore, the District Forum does not have the jurisdiction to entertain the same.

In the counter filed by him, respondent No.1 has averred that he had placed an order upon the writ petitioner to buy 500 shares of Vijaya Shanti Builders, Madras @ Rs.24.15 ps. per share and intimation to that effect was sent to the writ petitioner on 6-6-1994. He has further averred that he had placed an order for purchase of 400 shares of Nagarjuna Fertilisers out of which the petitioner purchased 100 shares @ Rs.38-15 ps. per share and 300 shares at Rs.33-65 ps. per share and the same was confirmed by Memo dated 10-6-1994. Similar other transactions were entered between the parties, but the petitioner failed to deliver the shares despite repeated intimations. According to respondent No.1, the complaint filed by him constitutes ‘consumer dispute’ within the meaning of Section 2 (e).

I have heard learned counsel for the parties and perused the record. In my opinion, the writ petition is liable to be dismissed as a piece of frivolous luxury litigation. The notice issued by the District Forum to the petitioner does not constitute an adjudication of the rights of the parties. There is nothing in the notice issued by the District Forum from which it can be inferred that the Presiding Officer has prejudged the entitlement of respondent No.1 to any particular relief. The petitioner could have filed reply to the notice and raised all legally permissible objections, including the one relating to jurisdiction of the District Forum to entertain and adjudicate the complaint made by respondent No.1. If the District Forum was to decide the issue of jurisdiction against the petitioner or any order was passed prejudicially affecting his rights, then he could challenge the same by filing appeal under Section 15 of the Act before the State Commission. In the event of an adverse order being passed by the State Commission, the petitioner could avail the remedy of revision before the National Commission. In the alternative, he could have filed writ petition under Article 226 of the Constitution of India. However, instead of adopting that course, the petitioner straight away filed this petition and, as mentioned above, succeeded in persuading the learned Single Judge to stall and stultify the proceedings pending before the District Forum.

I am further of the view that, at this stage, the petitioner’s challenge to the jurisdiction

of the District Forum to entertain the complaint cannot be adjudicated under Article 226 of the Constitution because determination thereof depends on adjudication of the question whether the so-called agreement entered into between the petitioner and respondent No.1 for purchase of shares constitutes service and whether there was any deficiency in the services. All these could be decided by the District Forum on the basis of evidence to be produced by the parties. Therefore, there is no justification for this Court to intervene and abort the proceedings of the complaint filed by respondent No.1.

For the reasons mentioned above, the writ petition is dismissed.

The District Forum is directed to take up the complaint filed by respondent No.1 and decide the same as early as possible, but within a maximum period of six months from the date of receipt of this order.

G.S. SINGHVI, CJ

March 29, 2006

svs